

# EXHIBIT M

**Higgins, Christopher J.**

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**From:** Randall Garteiser <[rgarteiser@ghiplaw.com](mailto:rgarteiser@ghiplaw.com)>  
**Sent:** Thursday, June 16, 2016 6:31 PM  
**To:** Higgins, Christopher J.  
**Cc:** <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)>; AudibleMagic-BlueSpike; Christopher Honea; Eric Findlay; Walter Lackey; Jerry D. Goldstein  
**Subject:** Re: Blue Spike, LLC v. Audible Magic Corp. - 6:15cv584: Blue Spike's Counter Designations and Objections

Of course we didn't, we said we would not.



**Randall Garteiser** / Partner  
[888.908.4400 x100](tel:888.908.4400) / [rgarteiser@ghiplaw.com](mailto:rgarteiser@ghiplaw.com)  
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On Jun 16, 2016, at 1:47 PM, Higgins, Christopher J. <[chiggins@orrick.com](mailto:chiggins@orrick.com)> wrote:

Counsel,

Blue Spike did not join the parties' meet and confer at 3:00 pm central today to discuss matters related to tomorrow's Joint Pretrial Order. Blue Spike requested this time for the meet and confer and indicated that it was available. It is now the day before we have to file the Joint Pretrial Order and Blue Spike refuses to meet and confer. Blue Spike has also failed to meet the deadlines from the Court's Amended Scheduling Order, nor has Blue Spike met any deadline after Audible Magic granted Blue Spike an extension. Its unilateral decision to miss deadlines is prejudicial to Audible Magic and hinders the parties' ability to prepare a Joint Pretrial Order that is both helpful to the Court and narrows the issues in dispute for the Court.

Audible Magic has prepared all of its pretrial submissions and is ready to file tomorrow. If Blue Spike wishes to participate in the joint filing, please send us Blue Spike's inserts so that they can be included in the filing. We hoped to discuss the pretrial filings and the parties' objections on today's meet and confer (or on any of the previous meet and confers we have been requesting for the past week), but Blue Spike simply refuses to participate in a meet and confer.

- Chris

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**From:** Higgins, Christopher J.  
**Sent:** Thursday, June 16, 2016 1:15 PM  
**To:** Randall Garteiser <[rgarteiser@ghiplaw.com](mailto:rgarteiser@ghiplaw.com)>  
**Cc:** <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)> <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)>; AudibleMagic-BlueSpike <[AudibleMagic-BlueSpike@orrick.com](mailto:AudibleMagic-BlueSpike@orrick.com)>; Christopher Honea <[chonea@ghiplaw.com](mailto:chonea@ghiplaw.com)>; Eric Findlay

<[efindlay@findlaycraft.com](mailto:efindlay@findlaycraft.com)>; Walter Lackey <[wlackey@findlaycraft.com](mailto:wlackey@findlaycraft.com)>; Jerry D. Goldstein <[jgoldstein@jdgoldstein.com](mailto:jgoldstein@jdgoldstein.com)>

**Subject:** RE: Blue Spike, LLC v. Audible Magic Corp. - 6:15cv584: Blue Spike's Counter Designations and Objections

Randall,

Waiting until tomorrow at 3pm (the day the Joint Pretrial Order is due) to meet and confer for the first time is completely unacceptable. I responded to your email last week (see attached) and stated Audible Magic's position that Blue Spike's objections are waived and we could not agree to any more extensions. Blue Spike chose not to go to the Court. We can meet and confer on that issue and see if it can be resolved or narrowed, but you refuse to even meet and confer. We will be on the line at 3 pm central today for the meet and confer. There are still numerous issues to discuss regarding tomorrow's filing that the waiver issue does not impact. Should Blue Spike refuse to join, we will note that in the Joint Pretrial Filing and will unilaterally file our own version of the Joint Pretrial Filing because of Blue Spike's refusal to meet and confer.

Your false accusations that I "mislead" you in any way are unacceptable and unprofessional. We have granted Blue Spike multiple extensions for its pretrial materials, but for the last month Blue Spike has dragged its feet, waiting until two days before the Joint Pretrial Order is due to even serve a compliant exhibit list. Moreover, waiting until three days before the Pretrial Order is due to serve Blue Spike's objections does not give the parties any meaningful amount of time to meet and confer on those objections. Audible Magic served its Exhibit List on May 18<sup>th</sup>. Blue Spike has had that list for a month, yet it waited until yesterday to serve its objections. It cannot unilaterally grant itself extensions that prejudice Audible Magic.

Audible Magic will strenuously oppose any attempt by Blue Spike to delay the Joint Pretrial Filing or the Pretrial Conference. We will attach each email that Audible Magic has sent to Blue Spike in the past month to the Joint Pretrial Filing. Those emails will detail the numerous extensions given to Blue Spike, the lack of Blue Spike meeting any of the Court's deadlines or meeting any of the extensions granted to it by Audible Magic.

- Chris

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**From:** Randall Garteiser [<mailto:rgarteiser@ghiplaw.com>]

**Sent:** Thursday, June 16, 2016 11:10 AM

**To:** Higgins, Christopher J. <[chiggins@orrick.com](mailto:chiggins@orrick.com)>

**Cc:** <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)> <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)>; AudibleMagic-BlueSpike <[AudibleMagic-BlueSpike@orrick.com](mailto:AudibleMagic-BlueSpike@orrick.com)>; Christopher Honea <[chonea@ghiplaw.com](mailto:chonea@ghiplaw.com)>; Eric Findlay <[efindlay@findlaycraft.com](mailto:efindlay@findlaycraft.com)>; Walter Lackey <[wlackey@findlaycraft.com](mailto:wlackey@findlaycraft.com)>

**Subject:** Re: Blue Spike, LLC v. Audible Magic Corp. - 6:15cv584: Blue Spike's Counter Designations and Objections

We disagree, which is usual for us. As counsel for Audible Magic, you mislead us into thinking we did not have to go to the Court to request an extension for such a simple extension. You could have responded to my email asking whether we needed to request an extension from the Court opposed. You choose not too, now you want to say "gotcha."

We will include a few examples of why the objections are necessary in our section of the briefing, since Audible Magic feels there is an issue requiring that the objections be waived.

As a result of this information, we now need more time to deal with your clients' latest strategy of attempting to say Blue Spike and Moskowitz waived objections. We can meet and confer tomorrow 3 p.m. Central.

On Jun 15, 2016, at 2:30 PM, Higgins, Christopher J. <[chiggins@orrick.com](mailto:chiggins@orrick.com)> wrote:

Counsel,

We received Blue Spike's objections and counterdesignations, which were served today. Our position, however, has not changed. The objections to Audible Magic's Exhibit List and Deposition Designations have been waived. Blue Spike's counterdesignations have been waived as well. We can discuss on tomorrow's meet and confer, but it will be Audible Magic's position in the parties' Joint Pretrial Order that Blue Spike failed to timely serve these documents, and they should not be included in the filing on Friday.

- Chris

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**From:** [cjensen@mail.leapfile.com](mailto:cjensen@mail.leapfile.com) [<mailto:cjensen@mail.leapfile.com>] **On Behalf Of** [cjensen@ghiplaw.com](mailto:cjensen@ghiplaw.com)  
**Sent:** Wednesday, June 15, 2016 12:58 AM  
**To:** Higgins, Christopher J. <[chiggins@orrick.com](mailto:chiggins@orrick.com)>  
**Subject:** Blue Spike, LLC v. Audible Magic Corp. - 6:15cv584: Blue Spike's Counter Designations and Objections

\*\*\* You have a secure file transfer awaiting download. Details enclosed. \*\*\*

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**FROM:** [cjensen@ghiplaw.com](mailto:cjensen@ghiplaw.com)  
**TO:** Christopher J Higgins ([chiggins@orrick.com](mailto:chiggins@orrick.com))  
**SUBJECT:** Blue Spike, LLC v. Audible Magic Corp. - 6:15cv584: Blue Spike's Counter Designations and Objections

**FILE TRANSFER WAITING:**

Click the secure link to download.

<http://ghiplaw.leapfile.net/get.jsp?t=ff80808155356fed0155526863254648>  
(TRANSFER EXPIRES June 28, 2016 10:57 PM)

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Counsel:

Please find a link to Blue Spike, LLC's Counter Deposition Designations, Objections to Audible Magic's Evidence List, and Objections to Audible Magic's Deposition Designations.

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**Higgins, Christopher J.**

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**From:** Higgins, Christopher J.  
**Sent:** Wednesday, June 15, 2016 5:07 PM  
**To:** Randall Garteiser  
**Cc:** Christopher Honea; AudibleMagic-BlueSpike; Eric Findlay; Walter Lackey  
**Subject:** RE: Audible Magic v. Blue Spike - Draft Joint Pretrial Submissions

Randall,

The parties need to meet and confer regarding the pretrial submissions due Friday. Audible Magic is still available tomorrow at 1:00 central. If Blue Spike is not available, propose an alternate time tomorrow.

We can use the following dial in:

1-877-211-3621  
Passcode: 290859

- Chris

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**From:** Higgins, Christopher J.  
**Sent:** Monday, June 13, 2016 7:31 PM  
**To:** Randall Garteiser <rgarteiser@ghiplaw.com>  
**Cc:** Christopher Honea <chonea@ghiplaw.com>; AudibleMagic-BlueSpike <AudibleMagic-BlueSpike@orrick.com>; Eric Findlay <efindlay@findlaycraft.com>; Walter Lackey <wlackey@findlaycraft.com>  
**Subject:** RE: Audible Magic v. Blue Spike - Draft Joint Pretrial Submissions

Randall,

It did not take Audible Magic time to adjust to or comply with any of the Court's Orders, and Audible Magic has met every deadline. Blue Spike still has yet to even serve an exhibit list that meets the Court's Order. It is now nearly a month late.

Please take the time to read through the documents before sending us comments. There are portions of the Joint Pretrial Order for Audible Magic's positions and portions for Blue Spike's positions. This is rather typical of Joint Pretrial Orders and is a straightforward process. Again, the substance is very much the same as the Joint Pretrial Order drafts that the parties worked on last year. Certain contentions have been removed not added.

This is presented in the same organization as the parties worked on last year. We are not sure why you now think it is a "mess" and disagree that any reorganization needs to take place. If Blue Spike believes another section is needed, it is free to propose that. Also, the document appears "one-sided" and "accusatory" because Blue Spike has not inserted its portions yet. Once Blue Spike inserts its portions, the document will no longer be "one-sided." Both parties sections, however, may certainly remain accusatory as there are issues in dispute.

There is confidential information in the Pretrial Order, but it is confidential information that was shared between Mr. Moskowitz and Muscle Fish. Therefore, Mr. Moskowitz may view the Pretrial Order, but it may not be shared to any extent outside of Mr. Moskowitz.

We are available to meet and confer tomorrow. It may make more sense, however, to wait until Wednesday so that Blue Spike has time to review the documents. We will strongly oppose any request for an extension by Blue Spike. This delay was its own making.

- Chris

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**From:** Randall Garteiser [<mailto:rgarteiser@ghiplaw.com>]  
**Sent:** Monday, June 13, 2016 6:35 PM

To: Higgins, Christopher J. <[chiggins@orrick.com](mailto:chiggins@orrick.com)>

Cc: Christopher Honea <[chonea@ghiplaw.com](mailto:chonea@ghiplaw.com)>; AudibleMagic-BlueSpike <[AudibleMagic-BlueSpike@orrick.com](mailto:AudibleMagic-BlueSpike@orrick.com)>; Eric Findlay <[efindlay@findlaycraft.com](mailto:efindlay@findlaycraft.com)>; Walter Lackey <[wlackey@findlaycraft.com](mailto:wlackey@findlaycraft.com)>

Subject: Re: Audible Magic v. Blue Spike - Draft Joint Pretrial Submissions

Stepping back from it, I understand it took Audible Magic time to adjust to the Court's orders. We are doing the same ourselves and last week I indicated we had obligations in another case, so it would have been impossible for us to turn to this earlier than today.

Is there any confidential information in the draft attachments that AM wants to redact out before we share it with our client? To meet with AM's proposed schedule and the Court's Order, we obviously need to share these documents with the counter-defendants.

Thanks in advance for your prompt response.

On Jun 13, 2016, at 5:27 PM, Randall Garteiser <[rgarteiser@ghiplaw.com](mailto:rgarteiser@ghiplaw.com)> wrote:

Guys, you should have thought about that before you waited so long to provide it to Blue Spike.

This document is accusatory so do we need to have separate portions for each party in each section?

Also, we need to break this down into specific counterclaims that apply to specific counter-defendants. This is a mess what you've presented to us. It's like a stream of thought, but again it's completely one-sided.

We are available to meet and confer tomorrow at 1 to get a handle on this, or ask for a joint extension.

On Jun 13, 2016, at 5:17 PM, Higgins, Christopher J. <[chiggins@orrick.com](mailto:chiggins@orrick.com)> wrote:

Randall,

The Joint Proposed Pretrial Order (and its exhibits) must be filed with the Court on Friday. We cannot push back the meet and confers if we are to work out any disagreements and be ready for filing on Friday. Much of the substance of the Order is similar to parts of the same document we exchanged last year when preparing for a trial on all issues. We have met and conferred on many of these issues already.

The quick turnaround on this is caused by Blue Spike requiring extensions to redo its deposition designations and exhibit list, and Blue Spike failing to even provide a compliant exhibit list. We can push the first meet and confer to Thursday morning. This means we may also need to schedule a second meet and confer on Friday morning as well to work out any remaining issues. We are available between 11:00 am and 1:00 pm central on Thursday and Friday. Let us know if Blue Spike is available during those times.

- Chris

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**From:** Randall Garteiser [<mailto:rgarteiser@ghiplaw.com>]  
**Sent:** Monday, June 13, 2016 4:38 PM  
**To:** Higgins, Christopher J. <[chiggins@orrick.com](mailto:chiggins@orrick.com)>  
**Cc:** Christopher Honea <[chonea@ghiplaw.com](mailto:chonea@ghiplaw.com)>; AudibleMagic-BlueSpike <[AudibleMagic-BlueSpike@orrick.com](mailto:AudibleMagic-BlueSpike@orrick.com)>; Eric Findlay <[efindlay@findlaycraft.com](mailto:efindlay@findlaycraft.com)>; Walter Lackey <[wlackey@findlaycraft.com](mailto:wlackey@findlaycraft.com)>  
**Subject:** Re: Audible Magic v. Blue Spike - Draft Joint Pretrial Submissions

This is a pretty quick turnaround of two days. When are we submitting this to the Court? We may need to push back the meet and confer.



**Randall Garteiser** / Partner  
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On Jun 13, 2016, at 1:45 PM, Higgins, Christopher J. <[chiggins@orrick.com](mailto:chiggins@orrick.com)> wrote:

Randall – I am resending the below email because I received a return message that the GHIP - Blue Spike mailbox ([bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)) is full and cannot accept messages.

- Chris

---

**From:** Higgins, Christopher J.  
**Sent:** Monday, June 13, 2016 2:19 PM  
**To:** <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)> <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)>  
**Cc:** AudibleMagic-BlueSpike <[AudibleMagic-BlueSpike@orrick.com](mailto:AudibleMagic-BlueSpike@orrick.com)>; Eric Findlay <[efindlay@findlaycraft.com](mailto:efindlay@findlaycraft.com)>; Walter Lackey <[wlackey@findlaycraft.com](mailto:wlackey@findlaycraft.com)>  
**Subject:** Audible Magic v. Blue Spike - Draft Joint Pretrial Submissions

Counsel,

Attached are drafts of the following pretrial submissions:

- Proposed Final Pretrial Order
- Jury Instructions
- Verdict Form



- Jury Questionnaire
- Proposed Voir Dire

We are available to meet and confer regarding these drafts on Wednesday at 1:00 central. Please let us know if Blue Spike is available at that time, and send along any of Blue Spike's proposals/inserts to the attached drafts prior to our meet and confer.

- Chris

<image001.gif>

CHRISTOPHER J. HIGGINS

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Washington, DC 20005-1706  
  
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<765345859(1)\_Audible Magic DRAFT Proposed Final Pretrial Order.docx>

<765354760(1)\_Audible Magic -- Draft Jury Instructions (2).docx>

<765345876(1)\_Audible Magic -- Draft Verdict Form (2).docx>

<765345870(1)\_Audible Magic -- Draft Jury Questionnaire.docx>

<765345884(1)\_Audible Magic -- Draft Proposed Voir Dire.docx>

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**Higgins, Christopher J.**

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**From:** Higgins, Christopher J.  
**Sent:** Friday, June 10, 2016 12:11 PM  
**To:** Randall Garteiser  
**Cc:** AudibleMagic-BlueSpike; <bluespike@ghiplaw.com>; Eric Findlay; Walter Lackey; Brian Craft  
**Subject:** RE: 6:15-cv-00584-RWS-CMC Blue Spike, LLC v. Audible Magic - Blue Spike's Pretrial Disclosures [NEW TRANSFER CONFIRMATION]

Randall,

Blue Spike cannot simply impose its own schedule onto this case and ignore the Court's schedule; it is prejudicial to Audible Magic. We already gave Blue Spike multiple extensions (one until June 6<sup>th</sup> to serve its designations and reduced exhibit list, which it missed; one until June 8<sup>th</sup> to serve objections, which it missed; and another until today to trim down its exhibit list, which it refused to accept). You have not given any reasonable basis for good cause for the lack of complying with the Court's Order for something that Blue Spike could have worked on for weeks, especially when we have already given Blue Spike extensions. The Joint Pretrial Order is due next week and we need to be able to prepare for what is going to be in the case. Any further delay by Blue Spike would prejudice Audible Magic's ability to prepare for trial. Although Blue Spike's objections are waived, we are willing to give Blue Spike until Monday only to serve its shortened Exhibit List so that we can at least define the scope of the case. This cannot add new exhibits, but rather only remove exhibits to shorten the list from 327 to under 250.

Should we need to meet and confer today, we are available after 6:00 central.

- Chris

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**From:** Randall Garteiser [mailto:rgarteiser@ghiplaw.com]  
**Sent:** Thursday, June 09, 2016 11:09 PM  
**To:** Higgins, Christopher J. <chiggins@orrick.com>  
**Cc:** AudibleMagic-BlueSpike <AudibleMagic-BlueSpike@orrick.com>; <bluespike@ghiplaw.com>  
<bluespike@ghiplaw.com>  
**Subject:** Re: 6:15-cv-00584-RWS-CMC Blue Spike, LLC v. Audible Magic - Blue Spike's Pretrial Disclosures [NEW TRANSFER CONFIRMATION]

Mr. Higgins,

Is it Audible Magic's position that it will not agree to a brief extension, such that Blue Spike needs to ask for relief from the Court? I thought I've explained our good cause to your team. We can discuss via teleconference tomorrow or on Saturday if that works better for you.

On Jun 9, 2016, at 4:17 PM, Higgins, Christopher J. <[chiggins@orrick.com](mailto:chiggins@orrick.com)> wrote:

Randall,

Audible Magic provided its objections to Blum and Schrempp yesterday. We do not need an extension, and we will not agree to your proposed unilateral extension for Blue Spike. Audible Magic will not object to Blue Spike's disclosure of the Blum and Schrempp designations on the basis that they were served late. Our other specific objections, as noted yesterday, still stand.

You have still not responded to any of our other points.

From my last email regarding Blue Spike's noncompliant exhibit list:

"Blue Spike failed to meet its obligations under the Court's Order [Dkt. 76]. On May 18<sup>th</sup>, when initial designations were due, Blue Spike served a non-compliant exhibit list that exceeded the Court's 250 exhibit limit by 77 exhibits. Even given Audible Magic's extension to Blue Spike of June 8 to remove irrelevant material in light of the Court granting Audible Magic's Motion for Summary Judgment of Noninfringement, Blue Spike failed to serve a compliant exhibit list. It has been over three weeks since exhibit lists were due, so Blue Spike cannot now be heard to complain that it did not have enough time. We were not aware of your deadlines in a different case, nor are they relevant to our case. If Blue Spike had conflicts it could not handle, then it should have sought leave from the Court."

From my last email regarding Blue Spike's failure to serve its objections:

"Regarding the video designations, your concerns are misplaced. The Court's Order expressly contemplates that each party is responsible for preparing a final edited video in accordance with its deposition designations and the Court's ruling on objections. Further, the Court's Order required only that "[e]ach party who proposes to offer deposition testimony shall serve a disclosure identifying the line and page numbers to be offered." [Dkt. 76]. Audible Magic provided specific line and page numbers for its deposition designations, such that Blue Spike could provide objections or counter designations. Blue Spike failed to serve either, and any objections or counter designations are now waived. Audible Magic will oppose any attempt by Blue Spike to include them in the pretrial submission."

It is Audible Magic's position that Blue Spike has waived its right to serve any objections or counterdesignations to Audible Magic's depo designations. Blue Spike has also now waived its right to serve any objections to Audible Magic's exhibits. It is also too late for Blue Spike to provide an exhibit list with "new exhibits." Audible Magic will only accept a revised exhibit list that removes exhibits to conform to the Court's 250 exhibit limit. If Blue Spike disagrees, then it should seek leave from the Court and Audible Magic will oppose.

- Chris

---

**From:** Randall Garteiser [<mailto:rgarteiser@ghiplaw.com>]

**Sent:** Thursday, June 09, 2016 4:45 PM

**To:** AudibleMagic-BlueSpike <[AudibleMagic-BlueSpike@orrick.com](mailto:AudibleMagic-BlueSpike@orrick.com)>

**Cc:** <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)> <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)>

**Subject:** Fwd: 6:15-cv-00584-RWS-CMC Blue Spike, LLC v. Audible Magic - Blue Spike's Pretrial Disclosures [NEW TRANSFER CONFIRMATION]

Here is our prior service that includes Blum and Schrempp portions designated previously. So the testimony we designated was never waived as Audible Magic suggests yesterday and earlier today. I apologize for compounding the misunderstanding by forwarding the June revised designations.

To avoid any alleged prejudice to Audible Magic, it may have until June 14, to serve its counter-designations and objections for Blue Spike's June 6th designations of Blum and Schrempp. Blue Spike will use this date for exhibits and counter-designations and objections as well.

Or if Audible Magic believes Court involvement is needed, please advise so we can proceed accordingly and need to meet and confer also about an expedited briefing schedule prior to the case management conference.

Begin forwarded message:

**From:** Colin Jensen <[cjensen@ghiplaw.com](mailto:cjensen@ghiplaw.com)>  
**Subject:** Fwd: 6:15-cv-00584-RWS-CMC Blue Spike, LLC v. Audible Magic - Blue Spike's Pretrial Disclosures [NEW TRANSFER CONFIRMATION]  
**Date:** May 19, 2016 at 12:20:07 AM CDT  
**To:** "<[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)>" <[bluespike@ghiplaw.com](mailto:bluespike@ghiplaw.com)>

Sent Depo designations and transcripts (attached) via Leapfile to Audible Magic's counsel (below.)

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